

STATE OF VERMONT  
CONTRACT AMENDMENT

It is hereby agreed by and between the State of Vermont, Department of Vermont Health Access (the "State") and CSG Government Solutions Inc., with a principal place of business in Chicago, IL (the "Contractor") that the Contract between them originally dated as of April 1, 2015, Contract # 28461, as amended to date, (the "Contract") is hereby amended as follows:

- I. **Maximum Amount.** The maximum amount payable under the Contract, wherever such reference appears in the Contract, shall be changed from \$12,431,813.00 to \$17,580,505.00, representing an increase of \$5,148,692.00.
- II. **Contract Term.** The Contract end date, wherever such reference appears in the Contract, shall be changed from May 15, 2021 to May 15, 2023.
- III. **Attachment A, Scope of Services.** The Scope of Services is amended as set forth in Attachment A to this Amendment:
- IV. **Attachment B, Payment Provisions.** The payment provisions are hereby amended by the addition of provisions set forth in the Attachment B to this Amendment.
- V. **Attachment D, Other Provisions.** Section 5, Professional Liability and Cyber Liability Insurance Coverage, of Attachment D of Amendment Two is hereby deleted in its entirety and replaced by the Section 5 below.

**5. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE**

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$1,000,000 per claim, \$3,000,000 aggregate. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, Contractor shall maintain first party Breach Notification Coverage of not less than \$5,000,000.00.

Before commencing work on this Contract the Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

With respect to the first party Breach Notification Coverage, Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Contract.

6. **Attachment E, Business Associates Agreement.** Attachment E is hereby deleted in its entirety and replaced by the Attachment E May 22, 2020 attached to this Amendment.

**Taxes Due to the State.** Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

**Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs).** Contractor is under no obligation to pay child support or is in good standing with respect to or in

full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Contractor further certifies under pains and penalties of perjury that, as of the date this contract amendment is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment>

SOV Cybersecurity Standard 19-01. All products and service provided to or for the use of the State under this Contract shall be in compliance with State of Vermont Cybersecurity Standard 19-01, which Contractor acknowledges has been provided to it, and is available on-line at the following URL: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

This document consists of 16 pages. Except as modified by this Amendment No. 4 all provisions of the Contract remain in full force and effect.

The signatures of the undersigned indicate that each has read and agrees to be bound by this Amendment to the Contract.

STATE OF VERMONT

DEPARTMENT OF VERMONT HEALTH ACCESS

E-SIGNED by Cory Gustafson May 13, 2021  
on 2021-05-13 18:12:46 GMT  
CORY GUSTAFSON, COMMISSIONER DATE  
NOB 1 South, 280 State Drive  
Waterbury, VT 05671-1010  
Phone: 802-241-0239  
Email: [Cory.Gustafson@vermont.gov](mailto:Cory.Gustafson@vermont.gov)

CONTRACTOR

CSG GOVERNMENT SOLUTIONS, INC.

E-SIGNED by Kirk Swanson May 13, 2021  
on 2021-05-13 16:07:59 GMT  
KIRK SWANSON, CHIEF FINANCIAL OFFICER DATE  
180 N. Stetson Avenue, Suite 3200  
Chicago, IL 60601  
Phone: 847-691-7506  
Email: [Kswanson@csgdelivers.com](mailto:Kswanson@csgdelivers.com)

## ATTACHMENT A: STATEMENT OF WORK

**Section B of Attachment A is hereby deleted in its entirety and replaced as set forth below.**

**THE CONTACTS FOR THIS AGREEMENT ARE AS FOLLOWS:**

	State Fiscal Manager	State Authorized Representative	For the Contractor
Name:	Tim Harvey	Joseph Liscinsky	Bill Schuh
Title:	Contract Administrator	Health Enterprise Director II	Account Executive
Phone #:	802-585-8433	802-879-1183	217-741-6848
E-mail:	Tim.Harvey@Vermont.gov	Joseph.Liscinsky@Vermont.gov	bschuh@csgdelivers.com

**Task 2B – Consolidated Periodic IV & V Reports is hereby deleted and replaced as set forth below:**

### **TASK 2B - Consolidated Periodic IV& V Reports**

The Contractor shall complete Consolidated Periodic IV&V Reports on a monthly basis throughout the engagement, submit them to the State Authorized Representative for review and approval by 5:00PM EST on the fifth business day of each new month. These monthly assessments are driven by the Projects' areas of highest risk and tied to software life cycle development milestones. To complete the Periodic IV&V Reports the Contractor leverages the prior Risk Assessment Checklist and defines any specific area(s) of focus with the State based on the Projects status, areas of concern, and the SDLC phase. Periodic Reports will address (per 45 § CFR 95.626) project management of both the State and Contractor, technical aspects of the Projects, user involvement, buy-in that the system will support the program business needs, review of past project performance, risk management process. The Contractor shall deliver monthly consolidated reports for all MMIS Program projects that were active during the reporting period. Each project will be assessed independently (represented as a section in the report) and any dependencies across projects or overarching risks will be addressed in a front section of the report. The Contractor shall produce 24 monthly reports for the reporting period beginning May 16, 2021 with final reporting period through May 15, 2023.

The Contractor is responsible for the development, delivery and support of all assessments and reports sent to the State and Federal partners, including all status reporting. Contractor shall manage this Contract and report to the State on scope, schedule and budget and resources.

The Contractor's IV&V Project Manager shall:

1. Provide the State with an overview of the proposed framework for evaluation of project performance.
2. Ensure the Work Plan accurately reflects the activities and completion dates for the IV&V assessments.
3. Collect information from various sources such as interviews, project documentation, participation in meetings, and other sources.
4. Analyze information collected using the agreed upon frameworks and standards to assess performance.
5. Draft the IV&V assessment to include recommendations on how to address the highest priority improvement opportunities.
6. Deliver the IV&V assessment to the appropriate stakeholders from the State and Federal agencies concurrently.
7. Review the IV&V assessment with the State, DDI vendor and/or other stakeholders and prepare minutes from the meeting.

8. Update the assessment to correct of fact, if needed, and provide a final version of the IV&V assessment to the stakeholders previously identified.

**Task 2G.2 Executive Status Reports and Ad-hoc Reports is hereby deleted and replaced with Task 2G.2 Ad-hoc Reports set forth below:**

***TASK 2G.2 - Ad-hoc Reports***

The Contractor shall produce periodic Ad Hoc Reports to communicate status and address important Project topics throughout the life of the Project upon written request by the State Authorized Representative.

**TASK 3B - Evaluation of DDI Outcomes Against CMS Certification Expectations is hereby deleted and replaced with TASK 3B - Evaluation of DDI Outcomes Against CMS Certification Expectations set forth below:**

**TASK 3B - Evaluation of DDI Outcomes Against CMS Certification Expectations**

Throughout the Projects' life cycle, the Contractor shall assess the State's compliance with CMS Certification including adherence to MITA 3.0, Vermont's MITA SS-A, and the Seven Conditions and Standards. The Contractor shall provide support and oversight to the State and DDI vendors' effort to prepare for the Certification, conduct a mock Certification Review to evaluate certification compliance, and work with the State and DDI vendor to develop the Vermont-specific Certification checklist requirements. This evaluation is performed quarterly throughout the Project life cycle in alignment with the applicable CMS certification requirements.

**Task 4 Subject Matter Expertise of Section 1 MMIS Tasks is hereby deleted in its entirety.**

**Task 9 Subject Matter Expertise of Section 2 IE&E Tasks is hereby deleted in its entirety.**

**Task 1 of Section 3 MMIS and IE&E Tasks Overview – Enterprise Executive Summary Report scope of work ends May 15, 2021.**

**Number 1. Task Orders of Section 3 MMIS & IE&E Tasks is hereby deleted.**

**Section F of Number 4. Key Project Staff is hereby deleted in its entirety and replaced with Section F. Key Project Staff as set forth below.**

F. Contractor shall assign the following Contractor staff positions ("Key Project Staff"), to meet the Requirements of this Contract:

- a. Account Executive
- b. Project Manager MMIS and IE&E IV&V Teams
- c. MMIS Functional Lead
- d. IE&E Functional Lead
- e. MMIS Technical Lead
- f. IE&E Technical Lead
- g. MMIS and IE&E IV&V & Testing Analyst
- h. MMIS and IE&E Certification Analyst

**Section G of Number 4. Key Project Staff is hereby deleted in its entirety and replaced with Section G. Key Project Staff as set forth below.**

G. Contractor agrees that during the entire term of this Contract, that Contractor's personnel filling the Key Project Staff positions will be devoted to the work describe in this contract as follows:

1. Contractor's and IV&V Project Manager, MMIS Technical Lead, MMIS Functional Lead, IE&E Functional Lead, IE&E Technical Lead and MMIS and IE&E Certification Analyst and MMIS and IE&E IV&V/Testing Analyst staff will be devoted full-time to the work described in this Contract, which is considered to be one hundred sixty (160) hours per calendar month, for each person, during the term of this Contract.
2. With the exception of the Account Executive, all Key Project Staff hours will be worked onsite during State office hours, at State offices, or other State defined locations, during normal business hours unless a different schedule is agreed with the State's Authorized Representative. While on State premises, Contractor's staff are not permitted to perform work for any other client of Contractor.

**Section a. of Number 5. Key Project Staff Changes is hereby deleted in its entirety and replaced with Section a. as set forth below.**

- a. Contractor shall not make a permanent change to the project assignment of Key Project Staff identified in paragraph 4.F during the term of the Contract without providing the State written justification, full background of the proposed new Key Project Staff consistent with Section 5e, a comprehensive transition plan where Contractor absorbs the costs of onboarding the new individual. Contractor shall follow the Change Order Process to request to replace a Key Project Staff and obtain prior written approval of the State's Authorized Representative. State approvals for replacement of Key Project Staff will not be unreasonably withheld. If required, Contractor shall provide a temporary replacement for its Key Staff (Account Executive, Project Manager and Technical Lead) to cover paid time off, when the time off may have impacts on the work being performed by the project team. Contractor shall provide a replacement resource consistent with Section 5e and will provide the State with advanced notice and obtain prior written approval of the State's Authorized Representative when this interim replacement need is warranted, including for how long and what the transition plan is to assure the interim replacement is seamless and cost neutral to the State.

**Section 6. Subject Matter Expertise is hereby by added to this Amendment 4 as set forth below.**

To conduct Tasks 1 – 3 of Section 1 MMIS Tasks and Tasks 1 – 3 of Section 2 IE&E Tasks, in addition to the key staff, the Contractor shall provide subject matter experts (SMEs), with prior experience in the implementation and/or operation of similar systems/functions. The Contractor shall provide SME hours up to the maximum amount set forth in Attachment B for the current two (2) year contract period, which will be used as approved by the State Authorized Representative.

SMEs will be used to provide expertise in executing the following activities to support Tasks 1 – 3 of Section 1 MMIS Tasks and Tasks 1 – 3 of Section 2 IE&E Tasks:

- verify DED for each deliverable, as applicable;
- evaluate vendor deliverables against the approved DEDs for completeness;
- provide recommendations for improvements and modifications based on industry experience;

- participate in requirements validation, joint application design, and system configuration sessions to identify risks and issues that may affect the project if not mitigated or resolved;
- verify processes and standards support the early identification and remediation of defects in project deliverables;
- ensure that DDI vendors tools do not conflict with, or present compatibility issues for tools or standards, including EPMO standards, for future State initiatives;
- evaluate completeness of testing based on required system functionality;
- participate in project status meetings, vendor status meetings, design sessions, testing triage, test results review and defect resolution meetings to provide project specific expertise;
- participate in periodic review and provide recommendations based on industry and State best practices; and
- support system certification training and preparation activities.

SME hours utilized in the reporting period will be included in the Monthly IE&E and MMIS IV&V Reports, with budget and actual usage of the project to-date.

The following process shall be executed to assign SME hours from the pool to the MMIS and IE&E projects.

- A. Before a SME may perform any work under this Contract, the Contractor must submit a written Request for Approval to the State's Authorized Representative. The written Request for Approval shall contain the SME's resume, reason for the Request for Approval, an estimated number of hours to be used from the available SME pool hours and an applicable start date for the SME.
- B. Upon receipt of the Request for Approval to authorize a Subject Matter Expert, the State shall review and respond to the request within ten (10) business days.
- C. Contractor shall be responsible for directing and supervising each of its SMEs.

**Section 6. Control of Contractor Personnel becomes Section 7. Control of Contractor Personnel**

**Section 7. Meeting Protocols becomes Section 8. Meeting Protocols**

**Section 8. Product Document Storage becomes Section 9. Product Document Storage**

**Section 9. Resources becomes Section 10. Resources**

**Section 10. State Caused Delays becomes Section 11. State Caused Delays**

**Section 11 Acceptance becomes Section 12. Acceptance**

**Section 12. Third Party Cooperation becomes Section 13. Third Party Cooperation**

**Section 13. Change Order Process becomes Section 14. Change Order Process**

## ATTACHMENT B: PAYMENT PROVISIONS

**Section 4 of Attachment B** is hereby deleted in its entirety and replaced as set forth below.

4. Invoices shall be submitted to the State at the following address:

[AHS.DVHAInvoices@vermont.gov](mailto:AHS.DVHAInvoices@vermont.gov)

**Section 5 of Attachment B** is amended by the addition of the following requirements as set forth below.

5. Deliverable Based Payments: Contractor shall submit invoices to the State upon State Acceptance of a deliverable in accordance with the schedule for delivered products, or rates for services performed as set forth below for the period of May 16, 2021 through May 15, 2023:

MMIS Deliverable (Section 1)	Anticipated Due Date	Total
Section 1 Task 2B Monthly IV&V Report #1	5/31/2021	\$ 39,500
Section 1 Task 2B Monthly IV&V Report #2	6/30/2021	\$ 79,000
Section 3 Quarterly IV&V Progress Report #1	6/30/2021	\$ 43,200
Section 1 Task 2B Monthly IV&V Report #3	7/31/2021	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #4	8/31/2021	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #5	9/30/2021	\$ 79,000
Section 3 Quarterly IV&V Progress Report #2	9/30/2021	\$ 43,200
Section 1 Task 2B Monthly IV&V Report #6	10/31/2021	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #7	11/30/2021	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #8	12/31/2021	\$ 79,000
Section 3 Quarterly IV&V Progress Report #3	12/31/2021	\$ 43,200
Section 1 Task 2B Monthly IV&V Report #9	1/31/2022	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #10	2/29/2022	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #11	3/31/2022	\$ 79,000
Section 3 Quarterly IV&V Progress Report #4	3/31/2022	\$ 43,200
Section 1 Task 2B Monthly IV&V Report #12	4/30/2022	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #13	5/31/2022	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #14	6/30/2022	\$ 79,000
Section 3 Quarterly IV&V Progress Report #5	6/30/2022	\$ 43,200
Section 1 Task 2B Monthly IV&V Report #15	7/31/2022	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #16	8/31/2022	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #17	9/30/2022	\$ 79,000
Section 3 Quarterly IV&V Progress Report #6	9/30/2022	\$ 43,200

Section 1 Task 2B Monthly IV&V Report #18	10/31/2022	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #19	11/30/2022	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #20	12/31/2022	\$ 79,000
Section 3 Quarterly IV&V Progress Report #7	12/31/2022	\$ 43,200
Section 1 Task 2B Monthly IV&V Report #21	1/31/2023	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #22	2/28/2023	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #23	3/31/2023	\$ 79,000
Section 3 Quarterly IV&V Progress Report #8	3/31/2023	\$ 43,200
Section 1 Task 2B Monthly IV&V Report #24	4/30/2023	\$ 79,000
Section 1 Task 2B Monthly IV&V Report #25	5/15/2023	\$ 39,500
<b>*Total MMIS</b>		<b>\$ 2,241,600.00</b>

<b>IE&amp;E Deliverable (Section 2)</b>	<b>Anticipated Due Date</b>	<b>Total</b>
Section 2 Task 2B Monthly IV&V Report #1	5/31/2021	\$ 38,220
Section 2 Task 2B Monthly IV&V Report #2	6/30/2021	\$ 76,440
Section 3 Quarterly IV&V Progress Report #1	6/30/2021	\$ 40,380
Section 2 Task 2B Monthly IV&V Report #3	7/31/2021	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #4	8/31/2021	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #5	9/30/2021	\$ 76,440
Section 3 Quarterly IV&V Progress Report #2	9/30/2021	\$ 40,380
Section 2 Task 2B Monthly IV&V Report #6	10/31/2021	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #7	11/30/2021	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #8	12/31/2021	\$ 76,440
Section 3 Quarterly IV&V Progress Report #3	12/31/2021	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #9	1/31/2022	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #10	2/29/2022	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #11	3/31/2022	\$ 76,440
Section 3 Quarterly IV&V Progress Report #4	3/31/2022	\$ 40,380
Section 2 Task 2B Monthly IV&V Report #12	4/30/2022	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #13	5/31/2022	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #14	6/30/2022	\$ 76,440
Section 3 Quarterly IV&V Progress Report #5	6/30/2022	\$ 40,380
Section 2 Task 2B Monthly IV&V Report #15	7/31/2022	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #16	8/31/2022	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #17	9/30/2022	\$ 76,440
Section 3 Quarterly IV&V Progress Report #6	9/30/2022	\$ 40,380
Section 2 Task 2B Monthly IV&V Report #18	10/31/2022	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #19	11/30/2022	\$ 76,440



Section 2 Task 2B Monthly IV&V Report #20	12/31/2022	\$ 76,440
Section 3 Quarterly IV&V Progress Report #7	12/31/2022	\$ 40,380
Section 2 Task 2B Monthly IV&V Report #21	1/31/2023	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #22	2/28/2023	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #23	3/31/2023	\$ 76,440
Section 3 Quarterly IV&V Progress Report #8	3/31/2023	\$ 40,380
Section 2 Task 2B Monthly IV&V Report #24	4/30/2023	\$ 76,440
Section 2 Task 2B Monthly IV&V Report #25	5/15/2023	\$ 38,220
<b>*Total IEE</b>		<b>\$2,157,600.00</b>
<b>MMIS and IE&amp;E Deliverables Total May 16, 2021 through May 15, 2023</b>		<b>\$4,399,200.00</b>
<b>Total SME funds added in A4</b>		<b>\$749,492.00</b>
<b>Total A4 Budget</b>		<b>\$5,148,692.00</b>

**Payment Assumptions:**

\*During months when travel is not required by the State the vendor shall provide a travel credit of 10% of the total monthly invoice.

\*\*The MMIS & IE&E SME budget pool is to be managed as a single budget pool but tracked according to the estimated budget for each work area and invoiced as such up to a maximum allowable amount for the period of May 16, 2021-May 15, 2023. The estimated breakout for this period is: MMIS SME - \$741,960.00 IE&E SME - \$254,213.00. Amendment 4 adds in \$741,690 of funding estimated for MMIS SME hours and \$7,532 for IEE SME hours. The remaining IE&E SME bucket of \$246,681 comes from unused Ad Hoc funds that have been reallocated to SME hours.

**Section 6. of Attachment B is hereby deleted in its entirety and replaced by Section 6 below:**

- Subject Matter Expert hourly rate is \$174.00 per hour up to the amounts set forth in Attachment B.

**The first paragraph of Section 8. of Attachment B is deleted in its entirety.**

ATTACHMENT E  
BUSINESS ASSOCIATE AGREEMENT

SOV CONTRACT BUSINESS ASSOCIATE: CSG GOVERNMENT SOLUTIONS INC.

SOV CONTRACT No. 28461 CONTRACT Effective DATE: April 1, 2015

THIS BUSINESS ASSOCIATE AGREEMENT ("AGREEMENT") IS ENTERED INTO BY AND BETWEEN THE STATE OF VERMONT AGENCY OF HUMAN SERVICES, OPERATING BY AND THROUGH ITS **DEPARTMENT OF VERMONT HEALTH ACCESS** ("COVERED ENTITY") AND PARTY IDENTIFIED IN THIS AGREEMENT AS CONTRACTOR OR GRANTEE ABOVE ("BUSINESS ASSOCIATE"). THIS AGREEMENT SUPPLEMENTS AND IS MADE A PART OF THE CONTRACT OR GRANT ("CONTRACT OR GRANT") TO WHICH IT IS ATTACHED.

Covered Entity and Business Associate enter into this Agreement to comply with the standards promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 ("Privacy Rule"), and the Security Standards, at 45 CFR Parts 160 and 164 ("Security Rule"), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

**The parties agree as follows:**

**1. Definitions.** All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations. Terms defined in this Agreement are italicized. Unless otherwise specified, when used in this Agreement, defined terms used in the singular shall be understood if appropriate in their context to include the plural when applicable.

"*Agent*" means an *Individual* acting within the scope of the agency of the *Business Associate*, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c) and includes Workforce members and *Subcontractors*.

"*Breach*" means the acquisition, Access, Use or Disclosure of *Protected Health Information (PHI)* which compromises the Security or privacy of the *PHI*, except as excluded in the definition of *Breach* in 45 CFR § 164.402.

"*Business Associate*" shall have the meaning given for "Business Associate" in 45 CFR § 160.103 and means Contractor or Grantee and includes its Workforce, *Agents* and *Subcontractors*.

"*Electronic PHI*" shall mean *PHI* created, received, maintained or transmitted electronically in accordance with 45 CFR § 160.103.

"*Individual*" includes a Person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

"*Protected Health Information*" ("*PHI*") shall have the meaning given in 45 CFR § 160.103, limited to the *PHI* created or received by *Business Associate* from or on behalf of Covered Entity.

"*Required by Law*" means a mandate contained in law that compels an entity to make a use or disclosure of *PHI* and that is enforceable in a court of law and shall have the meaning given in 45 CFR § 164.103.

“*Report*” means submissions required by this Agreement as provided in section 2.3.

“*Security Incident*” means the attempted or successful unauthorized Access, Use, Disclosure, modification, or destruction of Information or interference with system operations in an Information System relating to *PHI* in accordance with 45 CFR § 164.304.

“*Services*” includes all work performed by the *Business Associate* for or on behalf of Covered Entity that requires the Use and/or Disclosure of *PHI* to perform a *Business Associate* function described in 45 CFR § 160.103.

“*Subcontractor*” means a Person to whom *Business Associate* delegates a function, activity, or service, other than in the capacity of a member of the workforce of such *Business Associate*.

“*Successful Security Incident*” shall mean a *Security Incident* that results in the unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System.

“*Unsuccessful Security Incident*” shall mean a *Security Incident* such as routine occurrences that do not result in unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System, such as: (i) unsuccessful attempts to penetrate computer networks or services maintained by *Business Associate*; and (ii) immaterial incidents such as pings and other broadcast attacks on *Business Associate's* firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to *Business Associate's* Information System.

“*Targeted Unsuccessful Security Incident*” means an *Unsuccessful Security Incident* that appears to be an attempt to obtain unauthorized Access, Use, Disclosure, modification or destruction of the Covered Entity's *Electronic PHI*.

## **2. Contact Information for Privacy and Security Officers and Reports.**

2.1 *Business Associate* shall provide, within ten (10) days of the execution of this Agreement, written notice to the Contract or Grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer of the *Business Associate*. This information must be updated by *Business Associate* any time these contacts change.

2.2 Covered Entity's HIPAA Privacy Officer and HIPAA Security Officer contact information is posted at: <https://humanservices.vermont.gov/rules-policies/health-insurance-portability-and-accountability-act-hipaa>

2.3 *Business Associate* shall submit all *Reports* required by this Agreement to the following email address: [AHS.PrivacyAndSecurity@vermont.gov](mailto:AHS.PrivacyAndSecurity@vermont.gov)

## **3. Permitted and Required Uses/Disclosures of PHI.**

3.1 Subject to the terms in this Agreement, *Business Associate* may Use or Disclose *PHI* to perform *Services*, as specified in the Contract or Grant. Such Uses and Disclosures are limited to the minimum necessary to provide the *Services*. *Business Associate* shall not Use or Disclose *PHI* in any manner that would constitute a violation of the Privacy Rule if Used or Disclosed by Covered Entity in that manner. *Business Associate* may not Use or Disclose *PHI* other than as permitted or required by this Agreement or as *Required by Law* and only in compliance with applicable laws and regulations.

3.2 *Business Associate* may make *PHI* available to its Workforce, *Agent* and *Subcontractor* who need Access to perform *Services* as permitted by this Agreement, provided that *Business Associate* makes them aware of the Use and Disclosure restrictions in this Agreement and binds them to comply with such restrictions.

3.3 *Business Associate* shall be directly liable under HIPAA for impermissible Uses and Disclosures of *PHI*.

4. **Business Activities.** *Business Associate* may Use *PHI* if necessary for *Business Associate's* proper management and administration or to carry out its legal responsibilities. *Business Associate* may Disclose *PHI* for *Business Associate's* proper management and administration or to carry out its legal responsibilities if a Disclosure is *Required by Law* or if *Business Associate* obtains reasonable written assurances via a written agreement from the Person to whom the information is to be Disclosed that such *PHI* shall remain confidential and be Used or further Disclosed only as *Required by Law* or for the purpose for which it was Disclosed to the Person, and the Agreement requires the Person to notify *Business Associate*, within five (5) business days, in writing of any *Breach* of Unsecured *PHI* of which it is aware. Such Uses and Disclosures of *PHI* must be of the minimum amount necessary to accomplish such purposes.

5. **Electronic PHI Security Rule Obligations.**

5.1 With respect to *Electronic PHI*, *Business Associate* shall:

- a) Implement and use Administrative, Physical, and Technical Safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312;
- b) Identify in writing upon request from Covered Entity all the safeguards that it uses to protect such *Electronic PHI*;
- c) Prior to any Use or Disclosure of *Electronic PHI* by an *Agent* or *Subcontractor*, ensure that any *Agent* or *Subcontractor* to whom it provides *Electronic PHI* agrees in writing to implement and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of *Electronic PHI*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *Electronic PHI*, and be provided to Covered Entity upon request;
- d) Report in writing to Covered Entity any *Successful Security Incident* or *Targeted Unsuccessful Security Incident* as soon as it becomes aware of such incident and in no event later than five (5) business days after such awareness. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available;
- e) Following such *Report*, provide Covered Entity with the information necessary for Covered Entity to investigate any such incident; and
- f) Continue to provide to Covered Entity information concerning the incident as it becomes available to it.

5.2 **Reporting *Unsuccessful Security Incidents*.** *Business Associate* shall provide Covered Entity upon written request a *Report* that: (a) identifies the categories of *Unsuccessful Security Incidents*; (b) indicates whether *Business Associate* believes its current defensive security measures are adequate to address all *Unsuccessful Security Incidents*, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures *Business Associate* will implement to address the security inadequacies.

5.3 *Business Associate* shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

**6. Reporting and Documenting Breaches.**

6.1 *Business Associate* shall *Report* to Covered Entity any *Breach* of Unsecured *PHI* as soon as it, or any Person to whom *PHI* is disclosed under this Agreement, becomes aware of any such *Breach*, and in no event later than five (5) business days after such awareness, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available.

6.2 Following the *Report* described in 6.1, *Business Associate* shall conduct a risk assessment and provide it to Covered Entity with a summary of the event. *Business Associate* shall provide Covered Entity with the names of any *Individual* whose Unsecured *PHI* has been, or is reasonably believed to have been, the subject of the *Breach* and any other available information that is required to be given to the affected *Individual*, as set forth in 45 CFR § 164.404(c). Upon request by Covered Entity, *Business Associate* shall provide information necessary for Covered Entity to investigate the impermissible Use or Disclosure. *Business Associate* shall continue to provide to Covered Entity information concerning the *Breach* as it becomes available.

6.3 When *Business Associate* determines that an impermissible acquisition, Access, Use or Disclosure of *PHI* for which it is responsible is not a *Breach*, and therefore does not necessitate notice to the impacted *Individual*, it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). *Business Associate* shall make its risk assessment available to Covered Entity upon request. It shall include 1) the name of the person making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the *PHI* had been compromised.

**7. Mitigation and Corrective Action.** *Business Associate* shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible Use or Disclosure of *PHI*, even if the impermissible Use or Disclosure does not constitute a *Breach*. *Business Associate* shall draft and carry out a plan of corrective action to address any incident of impermissible Use or Disclosure of *PHI*. *Business Associate* shall make its mitigation and corrective action plans available to Covered Entity upon request.

**8. Providing Notice of Breaches.**

8.1 If Covered Entity determines that a *Breach* of *PHI* for which *Business Associate* was responsible, and if requested by Covered Entity, *Business Associate* shall provide notice to the *Individual* whose *PHI* has been the subject of the *Breach*. When so requested, *Business Associate* shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. *Business Associate* shall be responsible for the cost of notice and related remedies.

8.2 The notice to affected *Individuals* shall be provided as soon as reasonably possible and in no case later than sixty (60) calendar days after *Business Associate* reported the *Breach* to Covered Entity.

8.3 The notice to affected *Individuals* shall be written in plain language and shall include, to the extent possible: 1) a brief description of what happened; 2) a description of the types of Unsecured *PHI* that were involved in the *Breach*; 3) any steps *Individuals* can take to protect themselves from potential harm resulting from the *Breach*; 4) a brief description of what the *Business Associate* is doing to investigate the *Breach* to mitigate harm to *Individuals* and to protect against further *Breaches*; and 5)

contact procedures for *Individuals* to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.4 *Business Associate* shall notify *Individuals* of *Breaches* as specified in 45 CFR § 164.404(d) (methods of *Individual* notice). In addition, when a *Breach* involves more than 500 residents of Vermont, *Business Associate* shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. **Agreements with Subcontractors.** *Business Associate* shall enter into a Business Associate Agreement with any *Subcontractor* to whom it provides *PHI* to require compliance with HIPAA and to ensure *Business Associate* and *Subcontractor* comply with the terms and conditions of this Agreement. *Business Associate* must enter into such written agreement before any Use by or Disclosure of *PHI* to such *Subcontractor*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *PHI*. *Business Associate* shall provide a copy of the written agreement it enters into with a *Subcontractor* to Covered Entity upon request. *Business Associate* may not make any Disclosure of *PHI* to any *Subcontractor* without prior written consent of Covered Entity.

10. **Access to PHI.** *Business Associate* shall provide access to *PHI* in a Designated Record Set to Covered Entity or as directed by Covered Entity to an *Individual* to meet the requirements under 45 CFR § 164.524. *Business Associate* shall provide such access in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for Access to *PHI* that *Business Associate* directly receives from an *Individual*.

11. **Amendment of PHI.** *Business Associate* shall make any amendments to *PHI* in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an *Individual*. *Business Associate* shall make such amendments in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for amendment to *PHI* that *Business Associate* directly receives from an *Individual*.

12. **Accounting of Disclosures.** *Business Associate* shall document Disclosures of *PHI* and all information related to such Disclosures as would be required for Covered Entity to respond to a request by an *Individual* for an accounting of disclosures of *PHI* in accordance with 45 CFR § 164.528. *Business Associate* shall provide such information to Covered Entity or as directed by Covered Entity to an *Individual*, to permit Covered Entity to respond to an accounting request. *Business Associate* shall provide such information in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any accounting request that *Business Associate* directly receives from an *Individual*.

13. **Books and Records.** Subject to the attorney-client and other applicable legal privileges, *Business Associate* shall make its internal practices, books, and records (including policies and procedures and *PHI*) relating to the Use and Disclosure of *PHI* available to the Secretary of Health and Human Services (HHS) in the time and manner designated by the Secretary. *Business Associate* shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether *Business Associate* is in compliance with this Agreement.

14. **Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all the *PHI* is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If *Business Associate* fails to comply with any material term of this Agreement, Covered Entity may provide an opportunity for *Business Associate* to cure. If *Business Associate* does not cure within the

time specified by Covered Entity or if Covered Entity believes that cure is not reasonably possible, Covered Entity may immediately terminate the Contract or Grant without incurring liability or penalty for such termination. If neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary of HHS. Covered Entity has the right to seek to cure such failure by *Business Associate*. Regardless of whether Covered Entity cures, it retains any right or remedy available at law, in equity, or under the Contract or Grant and *Business Associate* retains its responsibility for such failure.

**15. Return/Destruction of PHI.**

15.1 *Business Associate* in connection with the expiration or termination of the Contract or Grant shall return or destroy, at the discretion of the Covered Entity, *PHI* that *Business Associate* still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. *Business Associate* shall not retain any copies of *PHI*. *Business Associate* shall certify in writing and report to Covered Entity (1) when all *PHI* has been returned or destroyed and (2) that *Business Associate* does not continue to maintain any *PHI*. *Business Associate* is to provide this certification during this thirty (30) day period.

15.2 *Business Associate* shall report to Covered Entity any conditions that *Business Associate* believes make the return or destruction of *PHI* infeasible. *Business Associate* shall extend the protections of this Agreement to such *PHI* and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible for so long as *Business Associate* maintains such *PHI*.

**16. Penalties.** *Business Associate* understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of *PHI* and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

**17. Training.** *Business Associate* understands its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, *Business Associate* shall participate in Covered Entity's training regarding the Use, Confidentiality, and Security of *PHI*; however, participation in such training shall not supplant nor relieve *Business Associate* of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

**18. Miscellaneous.**

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract or Grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the Contract or Grant continue in effect.

18.2 Each party shall cooperate with the other party to amend this Agreement from time to time as is necessary for such party to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA. This Agreement may not be amended, except by a writing signed by all parties hereto.

18.3 Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule, Security Rule, and HITECH) in construing the meaning and effect of this Agreement.

18.5 *Business Associate* shall not have or claim any ownership of *PHI*.

18.6 *Business Associate* shall abide by the terms and conditions of this Agreement with respect to all *PHI* even if some of that information relates to specific services for which *Business Associate* may not be a “*Business Associate*” of Covered Entity under the Privacy Rule.

18.7 *Business Associate* is prohibited from directly or indirectly receiving any remuneration in exchange for an *Individual's PHI*. *Business Associate* will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. *Reports* or data containing *PHI* may not be sold without Covered Entity's or the affected Individual's written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for *Business Associate* to return or destroy *PHI* as provided in Section 14.2 and (b) the obligation of *Business Associate* to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.